

# Early Intervening Services (EIS)

## What is it?

There is nothing in the federal regulations (IDEA) that prohibits children with disabilities who are receiving special education and related services under IDEA from receiving instruction using RtI strategies unless the use of such strategies is inconsistent with their individualized education programs (IEPs).

However, children with disabilities who are currently identified as needing services may not receive RtI services that are funded with IDEA funds used for EIS, because EIS is for students who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

## How may the money be used?

In implementing coordinated, early intervening services under this section, an LEA may carry out activities that include:

- **Professional Development** for teachers and other school staff to enable personnel to deliver scientifically based academic and behavioral interventions.
- **Providing** educational and behavioral evaluations, services, and support.

## Is the use of funds for EIS required or permitted?

Generally, the use of funds an LEA receives under Part B of the Act for EIS is discretionary on the part of the LEA, except when an LEA has significant disproportionality based on race and ethnicity. Under 34 CFR §300.226, an LEA may not use more than 15% of the amount the LEA receives under Part B of the Act for any fiscal year, less any amount reduced by the LEA pursuant to 34 CFR §300.205, if any, in combination with other amounts (which may include amounts other than education funds), to develop and implement coordinated EIS. If a State identifies an LEA as having significant disproportionality based on race and ethnicity with respect to the identification of children with disabilities, the placement of children with disabilities in particular educational settings, or the incidence, duration, and type of disciplinary actions taken against children with disabilities, including suspensions and expulsions, the SEA must require the LEA to reserve the maximum amount of funds available to the LEA to provide EIS to children in the LEA, particularly, but not exclusively, to children in those groups that were significantly overidentified.

EIS activities may include professional development to enable district staff to deliver scientific research-based academic instruction and behavioral interventions, including scientifically based literacy instruction, and, where appropriate, instruction on the use of adaptive and instructional software. EIS activities may also provide educational and behavioral evaluations, services and supports. School districts that use EIS funds must report to SD DOE the number of students served through these funds and the number of these students that become eligible for special education services within the following two years.

## What is the relationship between EIS funds and maintenance of effort (MOE) funds?

LEAs that seek to reduce their local maintenance of effort in accordance with 34 CFR §300.205(d) and use some of their Part B funds for early intervening services under 34 CFR §300.226 must do so with caution because the local maintenance of effort reduction provision and the authority to use Part B funds for early intervening services are interconnected. The decisions that an LEA makes about the amount of funds it uses for one purpose affect the amount that it may use for the other. Appendix D of the Part B regulations [71 FR 46817] provides examples of how 34 CFR §300.205(d), regarding local maintenance of effort, and 34 CFR §300.226(a), regarding EIS funds, affect one another.

# Administrative Rules Regarding Early Intervening Services

**24:05:19:05.06. Early intervening services -- General.** A district may not use more than 15 percent of the amount the district receives under Part B of the IDEA for any fiscal year, less any amount reduced by the district pursuant to § 24:05:19:05.05, if any, in combination with other amounts, which may include amounts other than education funds, to develop and implement coordinated, early intervening services, which may include interagency financing structures, for students in kindergarten through grade 12, with a particular emphasis on students in kindergarten through grade three, who are not currently identified as needing special education or related services, but who need additional academic and behavioral support to succeed in a general education environment.

Nothing in this section either limits or creates a right to FAPE under Part B of the IDEA or delays appropriate evaluation of a child suspected of having a disability.

Funds made available to carry out this section may be used to carry out coordinated, early intervening services aligned with activities funded by, and carried out under, the ESEA if those funds are used to supplement, and not supplant, funds made available under the ESEA for the activities and services assisted under this section.

**24:05:19:05.07. Early intervening services -- Activities.** In implementing coordinated, early intervening services, a school district may carry out activities that include:

- (1) Professional development, which may be provided by entities other than school districts, for teachers and other school staff to enable such personnel to deliver scientifically-based academic and behavioral interventions, including scientifically-based literacy instruction, and, if appropriate, instruction on the use of adaptive and instructional software; and
- (2) Providing educational and behavioral evaluations, services, and supports, including scientifically-based literacy instruction.

**24:05:19:05.08. Early intervening services -- Reporting.** Each school district that develops and maintains coordinated, early intervening services must annually report to the department on:

- (1) The number of children served who received early intervening services; and
- (2) The number of children served who received early intervening services and subsequently receive special education and related services under Part B of the IDEA during the preceding two-year period.

**24:05:19:05.03. Permissive use of funds.** Notwithstanding federal requirements governing excess cost, use of Part B funds to supplement state, local and other federal funds and not supplant those funds, maintenance of effort, and commingling requirements, IDEA Part B funds provided to a school district may be used for the following activities:

- 1) For the costs of special education and related services and supplementary aids and services provided in a regular class or other education related setting to a student with a disability in accordance with the individual education program of the student, even if one or more nondisabled students benefit from these services;
- 2) To develop and implement coordinated, early intervening educational services in accordance with this chapter; and
- 3) To establish and implement cost or risk sharing funds, consortia, or cooperatives for the school district itself, or for school districts working in a consortium of which the district is a part, to pay for high cost special education and related services.

A school district may use funds received under Part B of the IDEA to purchase appropriate technology for recordkeeping, data collection, and related case management activities of teachers and related services personnel providing services described in the IEP of children with disabilities, that is needed for the implementation of those case management activities.

**24:05:17:10. Overidentification and disproportionality.** The department shall provide for the collection and examination of data to determine whether any inappropriate Overidentification or significant disproportionality based on race and ethnicity is occurring in the state and in districts of the state with respect to:

- (1) The identification of children as children with disabilities, including the identification of children as children with disabilities in accordance with a particular impairment described in chapter 24:05:24.01;
- (2) The placement in particular educational settings of these children; and
- (3) The incidence, duration, and type of disciplinary actions, including suspensions and expulsions.

In the case of a determination of inappropriate overidentification or significant disproportionality with respect to the identification of children as children with disabilities, or the placement in particular settings of these children, the department shall provide for the review of and, if appropriate, revision of the policies, procedures, and practices used in the identification or placement to ensure compliance with the requirements of Part B of the Individuals with Disabilities Education Act; require any district identified under this section to reserve the maximum amount of funds allowable to provide comprehensive coordinated early intervening services to serve children in the district, particularly, but not exclusively, children in those groups that were significantly overidentified under this section; and require the district to publicly report on the revision of policies, practices, and procedures described under this section.